

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE



0000164107

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

SEP 29 2015

DATE: SEPTEMBER 29, 2015

DOCKET NO.: T-20849A-14-0386

DOCKETED BY	<i>kh</i>
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Order on

TOLY DIGITAL NETWORKS, INC.
(CC&N / RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 8, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 20, 2015 AND OCTOBER 21, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

A handwritten signature in cursive script, reading "Jodi Jerich".
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 IN THE MATTER OF TOLY DIGITAL
9 NETWORKS, INC. FOR APPROVAL OF AN
10 APPLICATION FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 INTRASTATE TELECOMMUNICATIONS
13 SERVICES.

DOCKET NO. T-20849A-14-0386

DECISION NO. _____

ORDER

14 Open Meeting
15 October 20 and 21, 2015
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 On November 12, 2014, Toly Digital Networks, Inc. ("TDN") filed with the Arizona
19 Corporation Commission ("Commission") an application for approval of a Certificate of
20 Convenience and Necessity ("CC&N") to provide resold intrastate interexchange telecommunications
21 services within the State of Arizona.

22 On December 11, 2014, the Commission's Utilities Division ("Staff") sent a letter to TDN
23 requesting additional information via a First Set of Data Requests. The letter was not docketed until
24 January 5, 2015.

25 On January 15, 2015, TDN filed its responses to Staff's First Set of Data Requests.

26 On February 18, 2015, TDN filed its responses to Staff's Second Set of Data Requests
27 propounded on January 30, 2015 but never docketed.

28 On May 28, 2015, TDN filed a Notice of Filing Affidavit of Publication stating that notice of
the application had been published in the *Arizona Republic*, a newspaper of general circulation in the
State of Arizona.

On August 20, 2015, Staff filed a Staff Report recommending approval of TDN's application,
subject to certain conditions.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. TDN is a foreign corporation organized under the laws of Florida and authorized to conduct business in Arizona.¹

2. On November 12, 2014, TDN filed an application with the Commission to provide resold interexchange telecommunications services on a statewide basis in Arizona. The application also requested a determination that the Company's proposed services are competitive in Arizona.

3. Notice of TDN's application was given in accordance with the law.

4. Staff recommends approval of TDN's application for a CC&N to provide intrastate telecommunications services in Arizona, subject to the following conditions:

- a. TDN complies with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- b. TDN maintains its accounts and records as required by the Commission;
- c. TDN files with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- d. TDN maintains on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- e. TDN complies with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between TDN's tariffs and the Commission's rules;
- f. TDN cooperates with Commission investigations including, but not limited to customer complaints;
- g. TDN participates in and contribute to the Arizona Universal Service Fund, as required by the Commission;
- h. TDN notifies the Commission immediately upon changes to TDN's name, address, or telephone number;
- i. TDN's intrastate interexchange service offerings shall be classified as competitive pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1108;

¹ Application at Exhibit A.

- j. TDN's maximum rates for these services shall be the maximum rates proposed by TDN in its proposed tariffs. The minimum rates for TDN competitive services shall be TDN's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
- k. In the event that TDN states only one rate in its proposed tariff for a competitive service, the rate stated shall be the effective (actual) price to be charged for the service as well as the service's maximum rate;
- l. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from TDN and has determined that its fair value rate base is zero. Accordingly, TDN's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by TDN and believes they are just and reasonable as they are comparable to several long distance carriers operating in Arizona and comparable to the rates TDN charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by TDN, the fair value rate base information provided should not be given substantial weight in this analysis.
- m. In the event TDN requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.

5. Staff also recommends the CC&N granted to TDN be considered null and void after due process if TDN fails to docket conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service to its first customer, whichever comes first, and in accordance with the Decision.

6. Staff also recommends TDN's proposed services be classified as competitive given the availability of alternatives, the inability of TDN to adversely affect the long distances service markets, and TDN's lack of market power.

Technical Capability

7. TDN states it plans to resell long distance services provided by Level 3 and Verizon in Arizona.² TDN intends to provide its proposed services wholesale to Competitive Local Exchange Carriers and Incumbent Local Exchange Carriers, not to end users.³

8. Currently, TDN is authorized to provide resold interexchange long distance services in twenty-one (21) states that include Colorado, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Oregon, Pennsylvania,

² Staff Report at 2.

³ Id.

1 South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.⁴ TDN is presently
2 offering resold interexchange services in twenty-one (21) states that include Colorado, Connecticut,
3 Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, New York, North Carolina,
4 North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin,
5 and Wyoming.⁵ TDN also has an application pending in California.

6 9. TDN's team of officers and managers average over twenty (20) years of experience
7 each in the telecommunications industry.⁶

8 10. TDN maintains sixteen (16) employees outside of Arizona and does not intend to have
9 any employees within the State.⁷

10 11. Staff believes TDN has the technical capabilities to provide its proposed services in
11 Arizona.

12 **Financial Capabilities**

13 12. TDN provided unaudited financial statements for the twelve (12) months ending
14 December 31, 2013, listing total assets of \$521,176; total negative equity of \$216,225; and a negative
15 net income of \$272,351. For the twelve (12) months ending December 31, 2014, TDN listed total
16 assets of \$533,798; total negative equity of \$260,566; and a net income of \$45,659.⁸

17 13. According to Staff, customers would be minimally affected if TDN experiences
18 financial difficulties as there are number of companies that provide resold or facilities-based
19 interexchange telecommunications services.

20 14. Staff believes TDN has the financial capabilities to provide its proposed services in
21 Arizona.

22 **Rates and Charges**

23 15. Staff states that in general, rates for competitive services are not set according to rate
24 of return regulation. Staff believes that TDN's proposed rates are just and reasonable based on the
25

26 ⁴ Staff Report at 2, footnote 1.

27 ⁵ Id. at footnote 2.

⁶ Staff Report at 2.

⁷ Id.

28 ⁸ Id.

1 rates of comparable long distance carriers and the rates TDN charges in other jurisdictions.⁹ Staff
 2 states that while it considered the fair value rate base ("FVRB") information submitted by TDN, that
 3 information was not afforded substantial weight in Staff's analysis.¹⁰

4 16. While the Commission allows competitive telecommunications service companies
 5 flexible pricing per A.A.C. R14-2-1109, companies are required to file a tariff for each competitive
 6 service that includes a maximum rate and an effective rate to be charged.

7 17. Pursuant to A.A.C. R14-2-1109, the rates charged for each service TDN proposes to
 8 provide may not be less than TDN's total service long-run incremental cost of providing service.¹¹

9 18. TDN's proposed tariff states that it does not require customers to make deposits or
 10 advance payments.

11 **Complaint Information**

12 19. Staff contacted Public Utility Commissions from eleven (11) jurisdictions in which
 13 TDN stated it has authority to provide telecommunications services to determine whether TDN has
 14 the stated authority in those states and whether any consumer complaints had been lodged against
 15 TDN. Each state Staff contacted reported TDN had the authority to provide resold long distance
 16 telecommunications services and that no consumer complaints had been filed against TDN in the last
 17 twelve (12) months.¹²

18 20. According to TDN, it entered into a Consent Decree with the Federal Communications
 19 Commission ("FCC") to settle TDN's purported failure to timely file an annual customer proprietary
 20 network certification. As a result of the Consent Decree, the FCC issued an Order on July 25, 2011
 21 canceling the Notice of Apparent Liability for Forfeiture and TDN retained a consulting firm to file
 22 all required FCC and State PUC filings.¹³

23 ...

24 ...

25 ...

26 ⁹ Staff Report at 3.

27 ¹⁰ Id.

¹¹ Id. at 4.

¹² Id. at 2.

28 ¹³ Id. at 3.

21. Per the Staff Report, a search of the FCC's website and Google for TDN and its officers returned no additional complaints, civil or criminal investigations, or judgments or convictions against TDN or any of its officers, directors, or managers.¹⁴

22. Staff states that the Commission's Consumer Services Section reported that no complaints or opinions have been filed against TDN from January 1, 2011 to June 1, 2015.¹⁵ According to Staff, TDN is in good standing with the Commission's Corporations Division.¹⁶

Competitive Review

23. Staff believes TDN's proposed services should be classified as competitive because TDN is not a monopoly provider; TDN does not control a large segment of the telecommunications market; there are alternative providers to TDN's proposed services; and TDN does not have the ability to adversely affect the interexchange markets in Arizona.¹⁷

24. Based on the above factors, Staff concludes that TDN's proposed services should be classified as competitive.

25. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. TDN is a public service corporation within the meaning of Article XV of the Arizona Constitution, A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over TDN and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunication services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for TDN to provide the resold long distance telecommunications services as set forth in the application.

6. TDN is a fit and proper entity to receive a CC&N authorizing it to provide intrastate

¹⁴ Staff Report at 3.

¹⁵ Id. at 2.

¹⁶ Id.

¹⁷ Id. at 4.

telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

7. TDN's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for TDN to establish rates and charges that are not less than TDN's total service long-run incremental costs of providing the competitive services approved herein.

9. Pursuant to A.R.S. § 40-282, the application in this matter may be approved without a hearing.

10. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Toly Digital Networks, Inc. for a Certificate of Convenience and Necessity to provide intrastate telecommunications in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 4 and 5.

IT IS FURTHER ORDERED that Toly Digital Networks, Inc.'s telecommunications services are competitive in Arizona.

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1 IT IS FURTHER ORDERED that if Toly Digital Networks, Inc. fails to comply with the Staff
2 recommendation described in Findings of Fact No. 5, the Certificate of Convenience and Necessity
3 granted herein shall be considered null and void after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____ 2015.

15
16 JODI JERICH
17 EXECUTIVE DIRECTOR

18 DISSENT _____

19
20 DISSENT _____
21 SP/tv(ru)

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1 SERVICE LIST FOR: TOLY DIGITAL NETWORKS, INC.

2 DOCKET NO.: T-20849A-14-0386

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